

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KIM ALAN KENDALL,

Defendant-Appellant.

UNPUBLISHED

March 16, 1999

No. 202471

Calhoun Circuit Court

LC No. 96-001976 FC

Before: Kelly, P.J., and Gribbs and Fitzgerald, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree felony-murder, MCL 750.316; MSA 28.548, and sentenced to life imprisonment without parole. We affirm.

Defendant first argues that he was deprived of his right to a fair trial when the trial court refused to admit into evidence the codefendant's statement to police in which the codefendant admitted to having punched the victim. MRE 804(b)(3). We do not agree. Although the trial court's ruling does not specifically recognize *People v Barrera*, 451 Mich 261, 274-276; 547 NW2d 280 (1996), as the governing case in determining the admissibility of the statement as exculpatory evidence, its failure to do so did not result in prejudicial error. Even assuming arguendo that the trial court abused its discretion by excluding codefendant's statement, and we make no finding to that effect, any error would have been harmless. In making its case the prosecution never suggested that defendant himself inflicted the fatal blows on the victim. The evidence against defendant was presented on an aiding and abetting theory. Therefore the codefendant's admission that he, and not defendant, hit the victim did not go to any contested issue at trial. We find beyond a reasonable doubt that exclusion of the evidence did not contribute to the jury verdict by undermining defendant's right to present his defense. *Id* at 291.

Defendant next contends that the trial court erred by denying his motion for a continuance in order to permit him to seek an expert medical witness for trial. Because defendant, before his motion, had unsuccessfully attempted to obtain an expert, and it does not appear from the record that he would have found one even if the court had adjourned trial, no abuse of discretion occurred. *People v Wilson*, 397 Mich 76, 81; 243 NW2d 257 (1976); *People v Williams*, 386 Mich 565, 575, 578; 194 NW2d 337 (1972).

Next, defendant claims that the prosecution presented insufficient evidence to support his conviction. We disagree. Viewing the evidence in the light most favorable to the prosecutor, we believe that a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992).

Defendant also argues that an inculpatory statement he made to the police should not have been introduced at trial because it was involuntary. We disagree. The trial court properly concluded, after a hearing conducted pursuant to *People v Walker (On Rehearing)*, 374 Mich 331, 338; 132 NW2d 87 (1965), that the statement was voluntary and admissible. *People v Peerenboon*, 224 Mich App 195, 198; 568 NW2d 153 (1997). We find no error.

Defendant also contends that the trial court erred by admitting into evidence his mother's testimony that, before the crime, she had expelled him from her home for allegedly stealing from both her and the victim. Use of prior bad acts as evidence of character is excluded, except as allowed by MRE 404(b), to avoid the danger of conviction based on a defendant's history of misconduct. *People v Golochowicz*, 413 Mich 298, 308; 319 NW2d 518 (1982). However, in this case, even assuming arguendo that admission of the evidence was improper, any error was harmless beyond a reasonable doubt in light of the overwhelming evidence of defendant's guilt. *People v Robinson*, 386 Mich 551, 563; 194 NW2d 709 (1972).

Defendant argues that he was denied the effective assistance of counsel at trial. *People v Mitchell*, 454 Mich 145, 164; 560 NW2d 600 (1997); *People v Pickens*, 446 Mich 298, 314; 521 NW2d 797 (1994). Limiting our review to the record, defendant has not established any basis for relief due to ineffective assistance of counsel. *Id.*

Finally, defendant contends that the cumulative effect of several errors deprived him of a fair trial. *People v Kvam*, 160 Mich App 189, 201; 408 NW2d 71 (1987). We disagree. Any error in this case, whether considered singly or cumulatively, did not deprive defendant of a fair trial. *Id.*

Affirmed.

/s/ Michael J. Kelly

/s/ Roman S. Gibbs

/s/ E. Thomas Fitzgerald